

NEW JERSEY
CEMETERY BOARD

January 26, 2007

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
NEW JERSEY STATE CEMETERY BOARD

FILED

George L. Tomeraga

IN THE MATTER OF THE
APPLICATION OF

GARY DORSI
SP00103500

TO PRACTICE AS A CEMETERY
SALESPERSON IN THE STATE
OF NEW JERSEY

Administrative Action

FINAL ORDER
DENYING APPLICATION
FOR REINSTATEMENT

This matter was opened to the New Jersey Cemetery Board ("Board") upon receipt of an application for reinstatement of respondent's license as a cemetery salesperson. The application was dated March 10, 2006. Respondent was licensed by the Board as a cemetery salesperson on October 28, 1998. On August 31, 2000, the Board was notified that respondent was no longer employed as a cemetery salesperson and his license was made inactive. Respondent has not sought reinstatement of his license since that date, until his submission of the March 10, 2006 application.

A review of respondent's history indicates that in May of 1998, respondent was censured, fined \$50,000, and suspended for 60 days by the National Association of Security Dealers (NASD) based upon findings that as a branch manager of Hibbard Brown & Co., Inc., respondent engaged in, and substantially assisted others in engaging in high-pressure sales practices; and failed to exercise effective oversight of the sales activities

of his branch office, so as to prevent improper sales practices. Subsequently, on August 5, 1998, respondent's registration was revoked for failure to pay fines and costs.

Earlier, in a Consent Order entered into with the New Jersey Bureau of Securities, which also related to respondent's conduct while employed by Hibbard Brown & Co., Inc. the Bureau of Securities found that respondent had engaged in a course of conduct that acted as a fraud or deceit upon the public. The conduct included directing agents to employ high pressure sales techniques without giving investors the time or information to evaluate securities; misleading investors by failure to disclose the basis for commissions paid to Hibbard Brown agents, as well as other misleading acts and omissions. Further, respondent was found to have obstructed the Bureau of Securities investigation by, inter alia, giving false and misleading testimony. Respondent was ordered to pay a penalty of \$38,000 which he subsequently paid.

On December 15, 2003, respondent pled guilty before the Honorable Gerard E. Lynch in the United States District Court for the Southern District of New York to conspiracy to commit securities fraud and wire fraud in violation of 18 U.S.C. § 371. Respondent, while under oath, read the following admission into the record:

Between March and September of 2000, in an effort to obtain compensation for work I had previously performed to the benefit of Standard Automotive, a publicly-traded company, I agreed with [two Standard Automotive executives] to cause the purchase price of corporate acquisitions by Standard Automotive to be inflated by characterizing certain fees of the transactions as broker fees.

In furtherance of this agreement, in or about August 2000, in the Southern District of New York, I signed a letter agreement which provided that the seller of the companies that Standard Automotive was acquiring would pay a broker's fee to an entity I had formed, but which had performed no work in the transaction.

At the instruction of [the two executives], I delivered the major portion of the bogus broker's fees in cash at various times to [said executives]. T19-9 to 25.¹

The Court then offered this recapitulation, with which respondent concurred: "Essentially, the representation was that certain fees were being earned by you when, in fact, there were no fees earned or charged by you and the money was being kicked back to the [executives]." T20-1 to 4.

Respondent further admitted that he knew that his conduct was wrongful at the time that he engaged in it. T20-11 to 14.

Respondent has not yet been sentenced for the offense to which he has pled guilty, and consequently there is no judgement of conviction.

Respondent has indicated that he has been cooperating with federal law enforcement authorities in the investigation and prosecution of others associated with Standard Automotive in order to make amends for his conduct. His explanation for his conduct, as supplied by his attorney along with his application for reinstatement is that he "was a hard-working individual struggling to make ends meet to support his wife and four young children, and he could not afford to forgo [sic] money that was legitimately owned to him, even if he had to accommodate the wishes to his superiors at Standard Automotive to get it."

Respondent has furnished numerous letters from persons attesting to his character as a family man, his involvement in coaching children in sports activities, his dependability as a friend, his loyalty, his communication skills and even alluding to him as a role model.

¹ T = transcripts dated December 15, 2003.

Pursuant to the Uniform Enforcement Act, an application for licensure may be denied when an applicant has engaged in the use or employment of dishonesty, fraud, deception, misrepresentation, false promise or false pretense; or has been convicted of any crime involving moral turpitude or relating adversely to the activity regulated by the board. N.J.S.A. 45:1-21(b), (f). For purposes of N.J.S.A. 45:1-21(f), a plea of guilty is deemed a conviction, although judgment of conviction has not been entered. New Jersey courts have held that "crimes of fraud, dishonesty and attempting to obstruct justice" such as falsification of a tax return, or fixing parking tickets, are crimes of moral turpitude. In the Matter of the License of Fanelli, 174 N.J. 165, 176-77 (2001). Our highest court has affirmed that the "[i]ntent to defraud inherently involves moral turpitude." Id. at 177. Although the Federal crime to which respondent has pled guilty is unquestionably a crime of moral turpitude under this standard, denial of respondent's application is nonetheless not mandatory. Generally, an examination in such circumstances of any crime or offense in light of the rehabilitative factors specified in N.J.S.A. 2A:168A-2 is warranted. These factors are:

- a. The nature and duties of the occupational license for which the person is applying;
- b. The nature and seriousness of the offense;
- c. The circumstances under which the offense occurred;
- d. The date of the offense;
- e. The age of the person when the offense was committed;
- f. Whether the offense was an isolated or repeated incident;
- g. Social conditions that may have contributed to the offense;
- h. Evidence of rehabilitation.

With respect to respondent's age, he entered into the Consent Order with the New Jersey Bureau of Securities when he was 37 years of age, and the Order related to conduct he was engaged in from the age of approximately 28 through age 34. The conduct addressed by the Consent Order, as well as by respondent's suspension by NASD, was not criminal, however, though found to have operated as a fraud or deceit upon the public. The guilty plea to the criminal offense on December 15, 2003 related to conduct the applicant engaged in at approximately age 40 through age 41.

The criminal offense related to the false characterization of broker's fees in connection with the sale of certain companies. The conduct addressed in the Consent Order with the Bureau of Securities concerned high pressure sales techniques and misleading sales practices. Both the criminal offense and the civil action relate adversely to the cemetery salesperson license, and implicate moral turpitude. A cemetery salesperson often visits consumer homes to sell burial plots, mausoleum crypts, or cremation niches. Often the salesperson deals with a vulnerable clientele: persons who may be elderly, frail and easily manipulated. The particular product being sold relates to the emotionally charged subject of death. It is particularly important that sales practices directed at this vulnerable population be open and aboveboard.

The circumstances surrounding both the Bureau of Securities matter and the federal crime indicate a course of conduct, rather than a single incident of misconduct. Social conditions contributing to the offense, according to respondent, appear to be the need to meet the ordinary financial obligations of family life, rather than any immediate, pressing and extraordinary need.

To sum up, respondent's age at the time of the initial conduct addressed by the

Bureau of Securities Consent Order is at the far side of what could be characterized as youthful indiscretion, and the duration of the conduct is problematic to that characterization because it continued until he was well into his thirties. The criminal conduct to which respondent pled guilty was committed at a time when respondent had entered into middle age. This indicates that the respondent had not learned from his earlier experience. He has engaged in repeated misconduct, with the occasions for that misconduct separated in time by more than six years. Moreover, there is no indication that his conduct was motivated by anything more pressing than the ordinary financial needs of the majority of citizens of New Jersey, who manage to support their families without engaging in fraudulent behavior and without committing criminal acts.

With regard to the final factor, evidence of rehabilitation, the respondent indicates that he has been cooperating with Federal authorities to demonstrate his contrition, and has submitted to the Board numerous testimonial letters with regard to his admirable qualities. In another context, New Jersey's Supreme Court has noted on the subject of rehabilitation: "The absence of any misconduct over a period of intervening years will, of course, be noted . . . and a particularly productive use of one's time subsequent to the misconduct will be credited. Affirmative recommendations from people aware of the applicant's misconduct who specifically consider the individual's fitness in light of that behavior may also be found probative of present good character." Matter of the Application of Donald G. Matthews, 94 N.J. 59, 82 (1983) (citations omitted). The letters submitted by respondent do not mention his prior incidents of misconduct at all. For instance, there is no indication that the individual who cited the applicant as a role model for young adults and parents was aware of this misconduct.

Here, respondent's original misconduct was eclipsed by his subsequent misconduct in 2000 and 2001. Since his conviction in 2003 respondent has been cooperating with the authorities, but since he had not yet been sentenced for his crime, at least at the time of his submissions to the Board, this conduct cannot be viewed as particularly probative of present rehabilitation. Respondent's involvement with coaching of children's athletics, and the fact that in several instances he has proved a helpful and loyal friend, is not enough to overcome the nature of respondent's prior pattern of misconduct. Moreover respondent does not appear to have accepted responsibility or demonstrate remorse for his conduct, indicating that he committed the Federal offense because he "was a hard-working individual struggling to make ends meet to support his wife and four young children" and "could not afford" to do without the money his criminal conduct gained for him. Given the vulnerability of the class of consumer with whom a cemetery salesperson primarily has dealings, the Board would be remiss in its responsibility to protect the public were it to license respondent as a cemetery salesperson, who in other contexts has used inappropriate sales pressure and engaged in fraudulent conduct. Accordingly,

Based on the foregoing findings and conclusions, A Provisional Order Denying Application for Reinstatement was entered on October 3, 2006, and a copy served on respondent. The Provisional Order was subject to finalization by the Board at 5:00 p.m. on the 30th business day following entry unless respondent requested a modification or dismissal of the stated Findings of Fact or Conclusions of Law by submitting a written request for modification or dismissal setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed and submitting any and all documents or other written evidence supporting respondent's request for consideration and

reasons therefore.

Respondent replied to the Provisional Order with a written communication requesting that his application for reinstatement be withdrawn. No reasons for this request were indicated. This submission was reviewed by the Board, and the Board determined that further proceedings were not necessary and that no material discrepancies had been raised. The Board was not persuaded that respondent's submission merited further consideration, inasmuch as respondent did not dispute the Findings of Fact or Conclusions of Law. The Board thus determined that the Provisional Order should be made final.


Accordingly,

IT IS on this 24th day of January, 2007,

ORDERED that:

1. Respondent's application for licensure is hereby denied.

NEW JERSEY STATE
CEMETERY BOARD


Marion Brozowski
Board Chairman
For the Board